

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

The motion is DENIED as
moot in view of the transfer
to this District and filing of
an Amended Complaint.
SO ORDERED.
Dated: 3/30/2022

DEVIN G. NUNES,

Plaintiff,

v.

NBCUNIVERSAL MEDIA, LLC,

Defendant.

§
§
§
§
§
§
§
§



P. Kevin Castel

United States District Judge

CASE NO. 4:21-cv-00608

22 Civ. 1633 (PKC)

**DEFENDANT NBCUNIVERSAL MEDIA, LLC'S OPPOSED MOTION FOR LEAVE TO
FILE NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendant NBCUniversal Media, LLC (“NBCU”) respectfully seeks this Court’s leave to file a Notice of Supplemental Authority in support of its Motion to Dismiss for Lack of Personal Jurisdiction and Improper Venue under Federal Rules of Civil Procedure 12(b)(2), 12(b)(3) and 28 U.S.C. § 1406(a) or in the alternative, Motion to Transfer Venue to the U.S. District Court for the Eastern District of California under 28 U.S.C. § 1404(a) or 28 U.S.C. § 1406(a) (“Motion to Dismiss”) (ECF No. 5) and Response in Opposition to Plaintiff’s Motion to Permit Jurisdictional Discovery (ECF No. 11) under Local Rule CV-7(f) and (k) and would respectfully show the following:

1. On December 23, 2021, the Fifth Circuit Court of Appeals issued an opinion in a libel case, *Johnson v. The HuffingtonPost.com*, No. 21-20022, 2021 U.S. App. LEXIS 38102, much like this case. A copy of the opinion is attached as Exhibit A.
2. In *Johnson*, the court affirmed the dismissal of the case for lack of personal jurisdiction and held that Texas did not have personal jurisdiction over a defendant who was not a citizen of Texas, has no ties to Texas, the statements at issue were not about Texas, and no sources

were from Texas—even when the defendant’s website markets ads to, sells merchandise to, and collects data from, individuals in Texas. Ex. A, p. 1.

3. The court also affirmed the denial of jurisdictional discovery because the plaintiff failed to plead an adequate basis for jurisdiction and failed to show that discovery is likely to produce facts needed to withstand dismissal. Ex. A, p. 19.

4. Because the Fifth Circuit’s opinion in *Johnson* is binding on this Court and bears directly on the Motion to Dismiss and Plaintiff’s Motion to Permit Jurisdictional Discovery pending before this Court, NBCU respectfully seeks leave to file its Notice of Supplemental Authority in support of the Motion to Dismiss and Response in Opposition to Plaintiff’s Motion to Permit Jurisdictional Discovery.

Respectfully submitted,

By: /s/ Laura Lee Prather

Laura Lee Prather
State Bar No. 16234200
laura.prather@haynesboone.com
Michael J. Lambert
Louisiana State Bar No. 36539
michael.lambert@haynesboone.com
HAYNES AND BOONE, LLP
600 Congress Ave., Ste. 1300
Austin, Texas 78701
Telephone: (512) 867-8400
Facsimile: (512) 867-8470

Attorneys for Defendant NBCUniversal Media, LLC

CERTIFICATE OF CONFERENCE

I certify that NBCU has complied with the meet and confer requirement of Local Rule CV-7(h) by conferring with Plaintiff on December 28, 2021 by electronic mail. Plaintiff advised NBCU that it is opposed to NBCU filing a Notice of Supplemental Authority.

/s/ Laura Lee Prather

Laura Lee Prather

CERTIFICATE OF SERVICE

The undersigned certifies that on December 29, 2021, a true and correct copy of the above document was served via the CM/ECF system on the following counsel of record:

Madhu Sekharan
16614 Radiant Lilac Trl
Cypress, TX 77433-6365
281-304-6369 (phone)
MSekharanAttorney@outlook.com

/s/ Laura Lee Prather

Laura Lee Prather